



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33945460

Date: NOV. 12, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a biochemist, seeks to classify himself as an individual of extraordinary ability in the sciences. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen]'s entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). Specifically, the Director concluded that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), but that it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v). The Director indicated that the Petitioner did not submit evidence to address the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(iii), (vii)-(x). On appeal, the Petitioner reasserts that the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v), in addition to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi). The Petitioner does not assert on appeal that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(iii), (vii)-(x), thereby waiving these criteria. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)). The Petitioner does not overcome the Director’s denial for the reasons discussed below.

Evidence of the [individual’s] original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field. 8 C.F.R. § 204.5(h)(3)(v).

The Director acknowledged that the record contains letters from professors of fields related to biochemistry. However, the Director observed that the record “lacks specifics regarding how the [Petitioner’s] achievements as a researcher have affected significantly the field of biochemistry.” For example, the Director noted that “the [P]etitioner has not submitted sufficient objective, documentary evidence demonstrating that [his] research has provoked widespread commentary or that it has received notice from others at a level indicative of its ‘major significance’ in the field.” The Director also acknowledged that the Petitioner submitted information from Clarivate Analytics regarding the citation rate of the Petitioner’s scholarly publications. However, the Director also noted that the Clarivate Analytics information:

include a disclaimer stating “Citation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation

rates should not be interpreted as representing the central tendency of the distribution. Keep in mind that citation rates are calculated from citation counts of papers that meet the criteria for inclusion in [the Essential Science Indicators (ESI) database]. It is reasonable to expect that these rates are higher than those for all papers in the field, but a margin of difference is impossible to determine.”

Based on that disclaimer, the Director concluded that the Clarivate Analytics information “is not a reliable source; and therefore, cannot prove that the [P]etitioner’s citations have been of major significance to the field.” Relatedly, the Director noted that the copies of the Petitioner’s Google Scholar citation record information the Petitioner submitted in response to the Director’s request for evidence (RFE) cannot establish eligibility because it is dated after the date on which the Petitioner submitted the Form I-140, Immigrant Petition for Alien Workers, citing *Matter of Katigbak*, 14 I&N Dec. 45,49 (Reg’l Comm’r 1971). The Director further noted that, even if the record established the Petitioner’s scholarly publications’ citation rates, he “did not demonstrate that papers with such citation counts have necessarily had a major, significant impact or influence in the field.” The Director also noted that the record establishes the Petitioner’s research has received some media coverage and that he has received some research funding; however, the Director concluded that the record does not establish how this media coverage and funding indicates the Petitioner’s research has made contributions of major significance to the field, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner objects that the Director “failed to issue a clear finding regarding originality.” The Petitioner also states that he has made original contributions of major significance to the field of biochemistry research because “three of his published papers have received enough citations to rank among the top 10% of the most-cited articles in Biology & Biochemistry in their respective years of publication, including one paper in the top 1% of this category.” The Petitioner asserts that opinion letters written by [REDACTED] “media outlets discussing [the Petitioner’s] research,” and “details regarding funding received for [the Petitioner’s] research” establish he has made original contributions of major significance to the field of biochemistry research.

We first note that the Director did not err by failing “to issue a clear finding regarding originality” under 8 C.F.R. § 204.5(h)(3)(v). The regulation requires the Petitioner to establish that he has made original contributions in the field, and that the original contributions are of major significance to the field. Here, the issue of whether the Petitioner’s contributions were of major significance to the field of biochemistry research is dispositive for determining whether the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v). Thus, “a clear finding regarding originality” would not affect the outcome of the ultimate decision. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision). We acknowledge that the record establishes the Petitioner authored or coauthored at least one published scholarly paper that constitutes an original scholarly contribution, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(v).

Turning to the Petitioner’s citation record, at the time of filing the Petitioner submitted Google Scholar information regarding his scholarly articles’ citation records, with information from Clarivate regarding citation trends among papers included in the ESI database. In response to the Director’s RFE, the Petitioner submitted documents he described as “updated” citation information. However,

as the Director noted, information about citations dated after the petition filing date cannot establish eligibility because it presents a new set of material facts that did not exist at the time of filing, and we need not address this evidence further. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Together, the Google Scholar and Clarivate information submitted at the time of filing indicate that the Petitioner authored scholarly articles in the field of “Biology and Biochemistry” whose citations ranked in the top 1% in 2016, and in the top 10% in 2018 and 2021, among qualifying articles in the ESI database.

As the Director noted, the Clarivate information disclaimer discredits its own reliability. More specifically, the citation percentiles to which the Petitioner compares his articles’ citations is an overly broad category of all “Biology and Biochemistry” articles, including disparate specializations for which there may be routinely few or no citations, which the disclaimer describes as being unreflective of “the central tendency of the distribution.”¹ Therefore, without more accurate information about the citation rates of scholarly articles among biochemistry researchers sufficiently similar to the Petitioner’s research specialization during the relevant periods, the record does not establish how information in the record regarding his scholarly articles’ citation rates may be representative of their significance to the field in which the Petitioner specializes.

The Petitioner asserts on appeal that the number of citations three of his papers have received “are nowhere near the central tendency of the distribution. As such, the observation that ESI statistics do not represent the central tendency of the distribution is irrelevant.” On the contrary, the Clarivate disclaimer concession that its data “should not be interpreted as representing the central tendency of the distribution” informs that the data also should not be interpreted as representing the actual percentiles of citations. As we noted, grouping the Petitioner’s research in an overly broad category of all “Biology and Biochemistry” articles contributes to the Clarivate disclaimer’s concession that “[c]itation frequency is highly skewed.” The category of all “Biology and Biochemistry” articles includes those from disparate specializations for which there may be routinely few or no citations. By including disparate specializations for which there may be routinely few or no citations, the data creates the illusion that an article within a particular specialization that receives 20 citations is in the 90th percentile of all “Biology and Biochemistry” articles, whereas it may be in, for example, the 50th percentile of articles in similar specializations, excluding the disparate specializations for which there may be routinely few or no citations.

Next, although the opinion letters written by [REDACTED] address the “quality of [the Petitioner’s] work and its benefits to the country,” they do not establish how the Petitioner’s original scholarly contributions have been of major significance to the field of biochemistry research. For example, Dr. [REDACTED] notes that a research group in 2018 “turned to [the Petitioner’s] novel techniques to identify the bottleneck in the cyanobacterial conversion of CO₂ to (R)-3-hydroxybutyrate,” and that another research group in 2020 “discussed the efficacy of [the Petitioner’s] kinetic profiling method.” However, Dr. [REDACTED] letter does not explain how the two research groups’ activities indicate that the Petitioner’s original scholarly contributions have been of major significance to the field of biochemistry research, as opposed to some degree of significance to those two research groups. As another example, Dr. [REDACTED] opinion letter asserts that he has “utilized

¹ We take administrative notice that a statistical central tendency expresses the midpoint of a group of numerical values, around which the statistical data can be grouped and contextualized, such as percentiles.

[the Petitioner's] findings in my own work." Dr. [] appears to have participated in the 2018 research group referenced in Dr. [] opinion letter, and he generally informs that "other researchers have also benefitted from [the Petitioner's] techniques and the discoveries he has made." However, Dr. [] letter does not provide information regarding how the Petitioner's original scholarly contributions have been of major significance to the field of biochemistry research, beyond some unspecified number of research groups, including his own. Similarly, the opinion letters written by Dr. [] and Dr. [] discuss how they have used the Petitioner's research findings in their own research.

Dr. [] half-page opinion letter references media coverage by "the International Channel [] China Science Daily, and [] Observer from [] Daily," of a 2018 research project, noting that the Petitioner "is the first author of this work and performed most experiments and wrote the manuscript." However, Dr. [] does not elaborate on how the various media coverage informs how the Petitioner's original scholarly contributions may have been of major significance to the field of biochemistry research. Instead, Dr. [] asserts that a "core technology in this study is metabolic flux analysis" and that the Petitioner developed "a series of steady-state and dynamic metabolic flux analysis technologies for various biological systems," which "provide[s] essential technical support for research in synthetic biology, microbiology, and biomedical fields." The letter closes by opining that the Petitioner "should be credited as having received media recognition for the research."

In response to the Director's RFE, the Petitioner submitted copies of information he described as his "recognition by media outlets," including International Channel [] China Science Daily, and [] Daily, both written in a language other than English and containing certified English translations. The English translations of the media publications—including a series of still images from an apparent video with English subtitles from International Channel []—address research conducted by Dr. [] also identified as Dr. [] apparently the same individual who wrote the half-page opinion letter addressed above. However, the English translations of the media publications neither reference the Petitioner nor inform how his original scholarly contributions may have been of major significance to the field of biochemistry research. Instead, they generally assert that the research may "help synthetic biologists design and engineer cyanobacteria to directly convert carbon dioxide into biofuels and chemicals" and that it may provide "new ideas for understanding and improving the nitrogen use efficiency of crops." Thus, even if the media coverage recognized the Petitioner—which it does not—the coverage does not establish how his original scholarly contributions may have been of major significance to the field of biochemistry research, beyond some indeterminate level of usefulness.

Turning to the funding the Petitioner addresses on appeal, the record contains minimal information regarding the funding his various research projects have received. The "[e]vidence of [his] major funding sources" are brief, vague acknowledgments attached to his research publications. For example, one publication acknowledges that the research "was supported in part by the Ministry of Science and Technology of China . . . and the National Natural Science Foundation of China." Another publication acknowledges that the research "was funded . . . by the National Natural Science Foundation of China . . . , the National Key R&D Program of China . . . , and the Chinese Academy of Sciences." Another publication acknowledges that the research "was supported by the Strategic Priority Research Program of the Chinese Academy of Sciences . . . and Natural Science Foundation

of China.” The Petitioner also submitted generalized information regarding the funding sources, which he describes on appeal as “major Chinese agencies.” However, the record does not explain how receiving research funding in general may indicate that the research produced with that funding has major significance to any particular field. For example, the record does not establish that any of the funding sources only provide funding to research projects that will have major significance to any particular field, or to researchers whose prior research has had major significance to any particular field, which could establish that funding from such a source would categorically indicate the major significance of the project. Although the funding sources may be “major Chinese agencies,” as the Petitioner asserts, without more, the significance of funding sources does not establish how the research those sources funded—in advance—subsequently resulted in contributions of major significance. The record does not otherwise establish how receipt of some unspecified level of funding—from any source—may indicate how any of the Petitioner’s original scholarly contributions have been of major significance to the field of biochemistry research.

For the reasons discussed above, and considered as a whole, the record does not establish that the Petitioner’s original scholarly contributions have been of major significance to the field of biochemistry research, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(v). Therefore, the record does not satisfy at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x).

III. CONCLUSION

The Petitioner has not established he received a one-time achievement or, in the alternative, evidence that meets at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.